IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED:24.10.2007

CORAM;

THE HONOURABLE MR.JUSTICE K.CHANDRU

W.P.NO.16893 OF 2007
AND
M.P.NO.1 OF 2007

M.Natarajan ..Petitioner

vs

1.The Superintending Engineer
Kancheepuram Electricity
Distribution Circle
Kancheepuram

2.The Chief Engineer/
Distribution
Vellore Region
Vellore-6 ..Respondents

Writ Petition is filed under Article 226 of the Constitution of India for the issue of writ of Certiorarified Mandamus calling for the records relating to the order of the 2nd respondent made in Memo No.15472/393/Adm/A2/2006-4 dated 10.11.2006 and quash the same and direct the respondents to allow the petitioner to retire from service with all benefits.

for petitioner :Mr.UM.Ravichandran

for respondents:Mrs.V.Yamunadevi.,

ORDER

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The petitioner in the present case challenges the order dated 10.11.2006 issued by the Chief Engineer, Distribution, Vellore, retaining the petitioner in service in terms of Regulations 17(f) of the TNEB Service Regulations.

2. The petitioner was to retire on 30.11.2006 on reaching the age of his superannuation. But, he was not allowed to retire since an enquiry into a non-departmental criminal offence was under investigation. It is seen from the records that the petitioner was involved in a criminal case in F.I.R.No.2/2006 dated 14.2.2006.

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Subsequently, a final report was filed before the Judicial Magistrate Court No.I, Poonamallee under Section 173(3) of Cr.P.C., for offences under Sections 498 A, 506 Part II, 109, 34, 420, 465, 468 read with 271 I.P.C. The petitioner was arrayed as A2 and in the final report and the petitioner was charged as follows in that report:-

> "And in course of the above said transaction and in furtherance of their common intention on the accused-2 being the father who voluntarily aided and abetted by producing the forged mark sheets Xerox copies prepared by A1 to the Wit 1 & 3 and A3 who knowingly incorporate his name in the marriage invitation though his brother A1 was not completed BE., CSE Degree and abetted A1 to committed the aforesaid offence of forgery and inconsequence of the above said abettment of A2, A3, A1 has committed the aforesaid offence punishable u/s 465, 468 r/w 471 r/w 109 IPC and 34 of IPC."

Therefore, the trial is yet to take place. Since the petitioner's retirement age fell on 30.11.2006, the second respondent exercising power under Regulation 17(f) passed the impugned order. The said regulation reads as follows:-

> "(f) Notwithstanding anything contained in sub-regulation (a), an employee of the Board who is under suspension,
>
> (i) on a charge of misconduct; or
>
> (ii) against whom an enquiry into grave charges of criminal misconduct or allegations of criminal misconduct is pending; or
>
> (iii)against whom an enquiry into grave charges is contemplated or is pending; or
>
> (iv)against whom a complaint of criminal offence is under investigation or trial shall not be permitted to retire on his reaching the date of retirement, but shall be retained in service until the enquiry into the charge of misconduct or criminal misconduct or the enquiry into allegations of criminal misconduct or the enquiry into contemplated charges or disciplinary proceeding taken under Tamil Nadu Electricity Board Employees' (Discipline and Appeal) Regulations or under the respective Standing Orders applicable to the Workmen, as the case may be, in respect of item(iv) above is concluded and a final order passed thereon by the competent authority or by any higher authority.

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EXPLANATION: For the purpose of this clause, the expression `criminal misconduct' shall have the same meaning as in Section 13 of the prevention of Corruption Act, 1988 (Central Act 49 of 1988)".

4. However, Mr.UM.Ravichandran, learned counsel for the petitioner submitted that his case does not fall under Regulation 17 (f). He took pains to explain that the criminal misconduct mentioned under Regulation 17(f)(ii)relates to a criminal misconduct which as per the Explanation is one defined under Section 13 of the Prevention of Corruption Act, 1988. Therefore, in as much as the petitioner had not committed any offence under the Prevention of Corruption Act or any misconduct relating to such an offence, the infraction of Regulation 17(f) is misconceived. But is must be stated that Regulation 17(f)(iv) relates to any kind of complaint of criminal offence which is under investigation or trial and that an employee will not be allowed to retire on reaching the age of superannuation and that subregulations do not refer to corruption cases only.

5. The learned counsel submitted that even in that regulation the term criminal offence should also to be read as only a criminal misconduct as per the explanation and it should not be given any separate meaning. This Court is unable to agree with the said submission. What is contemplated in regulation 17(f)(ii) is entirely a different classes of offences. In regulation 17(f)(iv), it is offences not covered by regulation 17(f)(ii) which are covered. It is not necessary that any misconduct of an Electricity Board employee must relate to Prevention of Corruption Act alone. Even other offences such as bigamy have been made as part of the Conduct Rules applicable to Electricity Board employees. This Court cannot narrow down the scope of Regulation 17(f)(iv) and try to apply it only it only cases of Corruption. The said criminal offence under 17(f)(iv)is wider in scope. Therefore, under these circumstances, the writ petition is misconceived.

5. Accordingly, the writ petition will stand dismissed. No costs. Consequently, M.P.No.1/2007 is also dismissed.

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Sd/-
Asst. Registrar.

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Sub Asst. Registrar.

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To

1.The Superintending engineer
Kancheepuram Electricity
Distribution circle
Kancheepuram

2.The Chief Engineer/
Distribution
Vellore Region
Vellore-6

1 cc to Mr.UM. Ravichandran, Advocate, sr. 64564
1 cc to Ms. V. Yamuna Devi, Advocate, sr. 64423

W.P.NO.16893/2007
and
M.P.No.1/2007

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